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July 18, 2005

VIA FACSIMILE (803) 896-5246  
AND ELECTRONIC MAIL  
Charles L.A. Terreni  
Chief Clerk and Administrator  
Public Service Commission of South Carolina  
P.O. Drawer 11649  
Columbia, South Carolina 29211

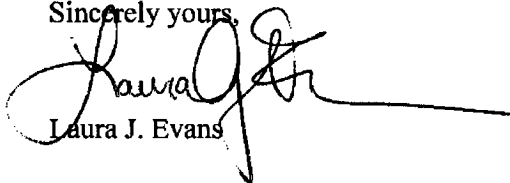
Re: Application of Haig Point Utility Company, Inc. for Approval of an Adjustment  
in Rates and Charges For Water and Sewer Services  
Docket No. 2005-34-W/S

Dear Mr. Terrini:

Please accept this letter and accompanying brief as notice of the Applicant's objection to the appointment of Shelby LeBron, P.E. as a "technical advisor" to the Public Service Commission ("Commission") in the above-referenced application.

With kindest regards, I am

Sincerely yours,



Laura J. Evans

CC: Wendy Cartledge, Esq., ORS  
John Beach, Esq., Ellis Lawhorne  
Kathy Willemin, Esq.

HAIG POINT UTILITY, INC.

DOCKET NO. 2005-34-W/S

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

**APPLICANT'S OBJECTION TO APPOINTMENT OF  
TECHNICAL ADVISOR**

By and through its undersigned counsel, the Applicant, Haig Point Utility Company, Inc. (the "Applicant") hereby objects to the July 13, 2005 Notice of the Commission's Intent to Appoint a Technical Advisor (the "Notice").<sup>1</sup> The Notice states that the Public Service Commission (the "Commission") intends to appoint Ms. LeBron as a technical advisor to "assist it in understanding the testimony and making the findings needed to issue an order in the requisite statutory time frame." The Notice cites *Colleton County v. McConnell*, 201 F. Supp.2d 618, 625 (D.S.C. 2002) as support for this appointment.

The Applicant objects to the appointment of Ms. LeBron for several reasons. First, the Applicant believes that such an appointment may not comply with the mandates of South Carolina Code Sections 58-3-60 and 58-3-260. Second, the Applicant does not believe that statutory authority exists for the Commission's appointment of Ms. LeBron. Third, the proposed agreement between Ms. Lebron and the Commission does not detail the exact work to be performed by Ms. LeBron, instead describing her duties as providing "technical advice" and "at a minimum" reviewing applications, prefiled testimony, and attending the hearings on the issues. It is anticipated in the agreement that Ms. LeBron

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<sup>1</sup> Although the original deadline for filing objections was July 15, 2005, the Commission extended the deadline to July 18, 2005.

would provide “advice on rate design, depreciation, and other technical issues.” The Applicant does not believe that these descriptions of her duties provide sufficient safeguards to ensure that her proposed role as technical advisor does not delve into fact-finding functions. Finally, a review of Ms. LeBron’s curriculum vitae does not reveal expertise in utility rate setting or utility economics and accounting, both of which are the main issues in the case before the Commission.

Pursuant to South Carolina Code Section 58-3-60(A), the Commission is “authorized and empowered to employ: a chief clerk and deputy clerk; a commission attorney and assistant commission attorneys; hearing officers; hearing reporters; and such other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission's duties and responsibilities as provided by law.” South Carolina Code Section 58-3-60(B) further requires that the Commission “must be staffed and equipped to perform the functions set forth in this title except for those responsibilities and functions reserved to the Office of Regulatory Staff.” This statute correlates with the view of the Commission as a “jury of experts”. *Southern Bell Telephone & Telegraph Co. v. Public Service Commission*, 244 S.E.2d 278 (S.C. 1978) (quoting *State ex rel. Utilities Commission v. General Telephone Co. of the Southeast*, 189 S.E.2d 705 (N.C. 1972), in describing a utilities commission as a “body of experts ‘composed of men of special knowledge, observation, and experience’ in the field of rate regulation...”). The statute cited does not, by its terms, grant the Commission the right to employ outside technical experts who are not deemed Commission employees.

South Carolina Code Section 58-3-260 addresses prohibited *ex parte* communications. Specifically, Section 58-3-260(B) mandates as follows:

- (B) *Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law, a commissioner, hearing officer, or commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication, nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the communication. (emphasis added)*

This statute clearly mandates that, *unless provided within the statute or by law*, a commissioner or hearing officer cannot communicate regarding the merits of the case with anyone without all parties having an opportunity to participate in the communication. Section 58-3-260(C) generally exempts from this prohibition “communications between and among commissioners regarding matters pending before the commission; provided, further, that any commissioner, hearing officer, or commission employee may receive aid from *commission employees* if the commission employees providing aid do not ... (b) furnish, augment, diminish, or modify the evidence in the record” (emphasis added). In other words, a commissioner or hearing officer may communicate and receive information from *Commission employees* in certain circumstances. Ms. LeBron is not an employee of the Commission. No other exemptions within Section 58-3-260(C) are applicable. It appears that the Commission is relying upon the exception contained in Subsection (C)(8) to appoint Ms. LeBron.

However, this subsection addresses only commission “employees”, not contracted advisors. There are no exceptions within the statutes described above or within other statutory or regulatory law to allow the appointment of an outside contracted advisor. The appointment of Ms. LeBron under the parameters of the Notice would deprive all parties of an opportunity to participate in the communications between the Commission and Ms. LeBron.

The Notice cites *Colleton County v. McConnell*, 201 F. Supp.2d 618, 625 (D.S.C. 2002) as support for Ms. LeBron’s appointment. It is important to note first that this decision occurred before the implementation of the *ex parte* communication rules discussed above.<sup>2</sup> Second, in the case cited, the court addressed its *own* decision to utilize a technical expert. The court provided notice to the parties of its intention to appoint a technical expert, to which none of the parties objected. In support of its right to appoint a technical advisor, the court cited *Reilly v. United States*, 863 F.2d 149, 154-56 (1st Cir.1988). A review of this case and a companion case, *Reilly v. United States*, 682 F.Supp. 150 (D.R.I. 1998) (*Reilly II*), demonstrates that the federal courts in these cases had identifiable statutory authority to appoint outside technical advisors. Specifically, the *Reilly II* court held that 5 United State Code Section 3109 and the Judiciary Appropriation Act of 1987 (Pub.L. No. 99-591, sec. 101(b), title IV, 100 Stat. 3341-61) allow the utilization of outside technical advisors. No such statutory authority exists here. The lack of statutory authority both within the *ex parte* statute discussed above and in other statutes or regulations clearly makes applicable the prohibitions of the *ex parte* statute above.

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<sup>2</sup> South Carolina Code Section 58-3-260 became effective January 1, 2005.

There also is a lack of guidance within the Notice and the proposed agreement regarding procedural safeguards to the proposed appointment. Specifically, there are no protocols or safeguards sufficient to ensure that Ms. LeBron does not become an evidentiary source. For example, there are no written instructions or job description for the proposed advisor, no requirement that she file an affidavit or other proof at the end of the case indicating compliance with the instructions or job description, and no other procedural safeguards to ensure the proposed advisor's independence and adherence to her limited proposed role.

Finally, a review of Ms. LeBron's *curriculum vitae* does not reveal a level of experience in utility rate setting or utility economics and accounting one would expect of a technical advisor slated to provide advice on "rate design, depreciation, and other technical issues." The issues in the present application before the Commission surround rate setting methodology, utility accounting, and other water and sewer utility economic issues. Other than a project for Batesburg-Leesville, South Carolina regarding "water and sewer rate review" (date and specifics unknown), Ms. LeBron does not appear to have experience in rate setting or utility economics and accounting. Thus, the Applicant would object to her appointment as a technical advisor on the issues surrounding this application on the grounds of inexperience and lack of expert qualifications in the pertinent subjects.

WHEREFORE, having stated its objections, the Applicant requests that the Commission refrain from appointing Ms. LeBron as a technical advisor and executing contractual arrangements regarding the same.

BY: 

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ATTORNEYS FOR HAIG POINT  
UTILITY COMPANY, INC.

July 18, 2005  
Charleston, South Carolina

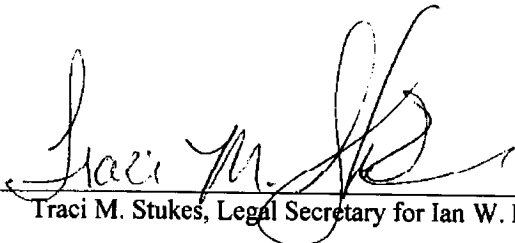
**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true copy of the foregoing by delivering a copy to the following counsel/parties, in accord with applicable Rules of Civil Procedure, on July 18, 2005 , by Electronic Email:

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By: \_\_\_\_\_

  
Traci M. Stukes, Legal Secretary for Ian W. Freeman, Esquire